

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA

v.

**RHASHEMA DERAMUS,
a/k/a Rhashema Shackelford**

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CR. NO. 2:11-cr-198-MEF

MOTION BY UNITED STATES ON PROCEDURE TO PROVIDE VICTIM NOTICE

Comes now the United States of America, by and through George L. Beck, Jr., United States Attorney for the Middle District of Alabama, and respectfully moves this Court to issue an order authorizing procedures under which the Government is to provide notice to the large number of victims and potential victims in the instant case.

The Justice for All Act of 2004 (“the Act”) was signed into law on October 30, 2004. Title 1 of the Act, codified at 18 U.S.C. §3771, provides certain rights to victims in federal criminal proceedings. Among those rights are the right to “reasonable, accurate, and timely notice” of public court proceedings and the “right to be reasonably heard at any public proceeding in the district court involving release, plea, [or] sentencing” 18 U.S.C. §3771 (a)(2), (a)(4). The Act requires “[o]fficers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation[,] and prosecution of crime [to] make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).” 18 U.S.C. §3771 (c)(1). The Act also instructs the Court to “ensure that the crime victim is afforded” those rights. 18 U.S.C. §3771 (b). The Act defines “crime victim” as a “person directly and proximately harmed as a result of the commission of a federal offense.” 18 U.S.C. §3771 (e).

KNOWN VICTIMS

The Government asserts that, in the instant case, the names, identities and addresses of some victims are known. However, the Government is aware that names, identities and addresses of other victims and potential victims, are not only unknown, but are also very numerous and may exceed several thousand persons. The Government moves, in order to be in compliance with the Act, that notice in this case be provided to known victims as follows: (a) that personal notice by first class mail be given to any victim named in the indictment; (b) that personal notice by first class mail be given to any victim identified by any government agency; and (c) that the government remain under a continuing duty to give personal notice by first class mail to future victims as their identities and contact information is identified.

The Government further moves that notice by personal mail shall be administered by the Office of the United States Attorney for the Middle District, the Department of Justice, or other appropriate government agency under existing guidelines of the Department of Justice.

SERVICE BY PUBLICATION

The victim notification burdens imposed by the Act in routine cases involving a single or limited number of victims are routinely handled by the Government. In other cases, involving hundreds, or thousands, of victims, the burdens imposed by the Act are overwhelming. Because of this burden, the Act grants the Court authority to fashion alternative notification procedures when the Court finds that implementation of the prescribed requirements would be impracticable. The Act provides:

In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

18 U.S.C. §3771 (d)(2).

Based on the evidence in this case, the Government believes that there may be hundreds of additional victims who are unknown to the Government and who cannot be located by standard methods. Those victims may reside in Pike County, Alabama, Montgomery County, Alabama, and DeKalb County, Georgia, and elsewhere in the Middle District of Alabama. The Government, therefore, proposes that this Court authorize it to provide notice by publication for those victims. Notification by publication is a reasonable procedure that will give effect to the Act and will not unduly complicate or prolong the proceedings.

The Court has its power under the Act which has been enforced by various federal courts across the nation. In support of this motion, the Government submits the following cases:

United States v. Stoke, 2007 U.S. Dist. LEXIS 48177 (M.D. Tenn., Jun. 22, 2007). Defendant was charged with embezzlement of funds. There were approximately 35,000 potential victims who worked for 1,000 employers. The government filed a motion under the Crime Victims Rights Act (CVRA) (18 U.S.C. Section 3771(d)(2)) to allow for alternative notification procedures. The Court granted the motion, allowing the government to publish information related to the case on the United States Attorney's Office (USAO) website, establish a toll free telephone line to provide case updates, notify the employees by proxy through their employers and publish a notice in a national publication referring victims to the website and toll-free number.

United States v. Freeman, 2009 U.S. Dist. LEXIS 110508 (N.D. Ohio, Nov. 10, 2009). Defendant was charged with mail fraud and the government estimated approximately 19,000 individuals were defrauded by the defendant. The Court found that to identify and locate all the victims and provide them with notice of the proceedings, as well as other rights, would unduly

prolong the proceedings, therefore, it allowed the government to place ads in three weekly national publications which had been used by the defendant in the course of the scheme.

United States v. Peralta, 2009 U.S. Dist. LEXIS 91760 (W.D., N.C. Sept. 14, 2009). Several defendants were charged with conspiracy related to scheme to fraudulently acquire tax refunds for approximately 2,500 residents of Puerto Rico. The Court granted the government's motion for alternative notification procedures allowing for a press release to the public within Puerto Rico providing information on the cases, an explanation of the Victim Notification System and the name and contact information for the Victim/Witness Coordinator for the U.S. Attorney's Office (W.D., N.C.).

In re W.R. Huff Asset Mgmt. Co., 409 F.3d 555 (2d Cir. 2005). To notify potential victims of proposed settlement agreement with the defendants, the government served parties listed in the bankruptcy proceeding with notice of the settlement; contacted the entities involved in the bankruptcy proceedings and asked them to provide information about the proposed settlement to any potential victims; held a nationally-televised press conference during which the proposed settlement agreements were discussed; issued a press release; and posted copies of the proposed agreements on the USAO website. The Court held that these alternative means of notice satisfied the requirements of the CVRA because to hire a claims administrator and send out written notice to determine who the victims were, and how to allocate settlement funds, would unreasonably delay the sentencing.

United States v. Saferstein, 2008 U.S. Dist. LEXIS 93834 (E.D., Pa. Nov. 18, 2008). The government filed a motion for alternative notification procedures in a telecommunications fraud action in order to notify as many as 300,000 individuals who may have been victims. Defense counsel objected to the government's motion arguing that the government failed to meet its

obligation to demonstrate that individual notification to victims was too burdensome and that any proposed public notification would serve to prejudice the jury pool. The Court found that alternative notification procedures were appropriate but required that any notice should omit the defendants' names and include a disclaimer regarding the presumption of innocence. The government drafted a press release and placed a notice in *USA Today* that conformed to the Court's requirements and stated the following: "An indictment is an accusation. A defendant is presumed innocent unless and until proven guilty."

United States v. Saltzman, 2007 U.S. Dist. LEXIS 87044 (E.D., N.Y, Nov 27, 2007). In order to provide notice to "tens of thousands of potential victims" of securities and money laundering offenses, the government proposed, and the Court approved, alternative notification by publication of a notice in a national newspaper that would direct potential victims to the website for the USAO-EDNY.

The Government moves that the application for a standing order on crime victim notification as outlined above demonstrates the Government's best efforts to see that crime victims are accorded their rights in compliance with the Act, judicial economy and practical considerations. This order not only insures that crime victims are afforded their rights, but the order also allows the government to use its best means to locate, identify and contact those victims.

Accordingly, the Government moves that, as to those unknown and potential victims, that publication be made in newspapers of general circulation and newspapers in geographical locations, or both, at the discretion of the Government as is reasonable and practical to provide fair, reasonable notice to victims and potential victims of their rights under the Victim Witness Notification Act as such rights relate to the ongoing prosecution. The United States intends to

publish the following notice in the legal notices sections of the Dothan Eagle and the Troy Messenger:

ATTENTION: FORMER PATIENTS OF TROY HOSPITAL: The United States Attorney's Office is currently prosecuting cases which allege, among other things, theft of personal identifying information of former patients of Troy Hospital and the use of that information to prepare fraudulent tax returns. These alleged thefts of that information occurred between January 17, 2011 and March 25, 2011. If you feel that you may be a victim of these alleged crimes and would like to obtain current information about these cases, please call the toll-free Victim Hotline at 1-800-699-0840 or visit our website at www.justice.gov/usao/alm/. An indictment is merely an accusation. A defendant is presumed innocent unless and until proven guilty.

The United States intends to publish the following notice in the legal notices section of the Montgomery Advertiser:

ATTENTION: CLIENTS OF THE STATE OF ALABAMA DEPARTMENT OF HUMAN RESOURCES, FORMER PATIENTS OF JACKSON HOSPITAL, EMPLOYEES OF VINSON GUARD SERVICE, INC., AND PARENTS OF STUDENTS IN JEFFERSON DAVIS HIGH SCHOOL DURING THE 2009-2010 SCHOOL YEAR: The United States Attorney's Office is currently prosecuting cases which allege, among other things, theft of personal identifying information of clients of the State of Alabama Department of Human Resources, former patients of Jackson Hospital, employees of Vinson Guard Service, Inc., and students who attended Jefferson Davis High School during the 2009-2010 school year and the use of that personal identifying information to prepare fraudulent tax returns. These alleged thefts of that information occurred between January 1, 2009 and March 25, 2011. If you feel that you may be a victim of these alleged crimes and would like to obtain current information about this case, please call the toll-free Victim Hotline at 1-800-699-0840 or visit our website at www.justice.gov/usao/alm/. An indictment is merely an accusation. A defendant is presumed innocent unless and until proven guilty.

The United States intends to publish the following notice in the legal notices section of the Champion, which is published in DeKalb County, Georgia:

ATTENTION: FORMER PATIENTS OF DEKALB MEDICAL CENTER: The United States Attorney's Office for the Middle District of Alabama is currently prosecuting cases which allege, among other things, theft of personal identifying information of former patients of the DeKalb Medical Center and the use of that information to prepare fraudulent tax returns. The theft of that information allegedly occurred between January 1, 2009 and March 25, 2011. If

you feel that you may be a victim of these alleged crimes and would like to obtain current information about this case, please call the toll-free Victim Hotline at 1-800-699-0840 or visit our website at www.justice.gov/usao/alm/. An indictment is merely an accusation. A defendant is presumed innocent unless and until proven guilty.

The Government intends to publish each notice for one day, preferably during the week of March 19, 2012. Upon receiving the Court's order authorizing this procedure, contact with the publishers will be made for publication of the notice. As the Act limits assertion of the rights enumerated in the Act to the crime victims, their counsel, and government counsel, the defendant's position on this notice is not required for the Court to make a determination of whether this procedure is reasonable. See 18 U.S.C. § 3771 (d)(1).

Additionally, the Government moves that it be allowed to establish a link on its website that would allow victims to access the date of each potential hearing in this case. Additionally, the victims will be given the following information concerning the Victim Notification System (VNS):

The VNS is designed to provide a victim with information regarding the case as it proceeds through the criminal justice system. A victim may obtain current information about this case on the VNS website at www.notify.usdoj.gov or from the VNS Call Center at 1-866-DOJ-4YOU (1-866-365-4968) (TDD/TTY: 1-866-228-2619) (International: 1-502-213-2767). In addition, a victim may use the Call Center or internet to update his/her contact information and/or change his/her decision about participation in the notification program. If a victim updates his/her contact information to include a current e-mail address, VNS will send information to that e-mail address. In order to continue to receive notification, it is the victim's responsibility to keep his/her contact information current.

A victim will use his/her Victim Identification Number (VIN) '**3357968**' and Personal Identification Number (PIN) '**8635**' anytime the victim contacts the Call Center and the first time the victim logs onto the VNS website. In addition, the first time the victim accesses the VNS internet site, the victim will be prompted to enter his/her last name (or business name) as currently contained in VNS.

Upon a conviction in this case, the Government will move the Court to require the defendant to pay the costs of the notice, including reimbursement for expenses incurred in sending first class mail, publishing newspaper and other media notices or such other expenses incurred in connection with notifying victims and potential victims under the Act.

Premises considered, the United States respectfully moves that this Court enter an order requiring and allowing individual notice and notice by publication as requested and moved in this motion. The United States has included a proposed order as Attachment A to this motion.

Respectfully submitted this the 2nd day of March, 2012,

GEORGE L. BECK, JR.
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2012, I electronically filed the foregoing with the Clerk of Court, using the CM/ECF system, which will send notification of such filing to all attorneys of record.

GEORGE L. BECK, JR.
UNITED STATES ATTORNEY

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